IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G. ROHINI

WRIT PETITION NO : 9449 of 2004

Between:

Dr.M.S.Thomas, s/o T.M.Samuel,
R/o Kadapa District.

..... PETITIONER

AND

1 The District Educational Officer, Kadapa District.
2 Mandal Parishad Development Officer, Kodur, Kadapa District.
3 Mandal Educational Officer, Kodur, Kadapa District.
4 The President, Mandal Praja Parishad, Rly.Kodur, Kadapa District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction particularly one in the nature of writ of mandamus declaring the inaction of the respondent Nos.1 to 3 in not shifting the Mandal Parishad Elementary School, Kodur from the existing old premises of the petitioner to the new alternate building in spite of the directions of the District Collector, Kadapa as illegal, null, Void & arbitrary

Counsel for the Petitioner: MR.M.S.PRASAD

Counsel for the Respondents: GP FOR EDUCATION

The Court made the following:

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THE HON'BLE MS. JUSTICE G. ROHINI

W.P.No.9449 of 2004

ORDER:

This writ petition is filed seeking a declaration that the alleged inaction on the part of the respondents 1 to 3 in shifting the Mandal Parishad Elementary School, Kodur, from the existing premises to the new alternative building in spite of the directions of the District Collector, Kadapa, is arbitrary and illegal.

The petitioner claims to be the owner of a house with Mangalore tiles located at Kodur, which was admittedly leased out to accommodate the Mandal Parishad Elementary School. It is stated that since the said building is very old and in a dilapidated condition, the petitioner made several representations to the concerned officials bringing to their notice the said fact and in pursuance thereof, the respondent authorities visited the school building and having found

that it is in a dilapidated condition and is unsafe for the school children, addressed a letter to the District Collector, Kadapa to make available an alternative building for locating the school. That apart, the respondents have also constructed a school building in Sy.No.712 on 15 cents of land donated by a philanthropist. Thereafter, the Chairman of the Education Committee of the school, made a request to the District Collector in the month of June, 2003 to shift the present school to the new premises which is at the distance of about 500 Sq.Yds. The then Minister for Women & Child Welfare endorsed on the said representation directing the District Collector, Kadapa, to take necessary steps to shift the school to the new campus from the academic 2003-04. The petitioner alleges that the respondent No.4 – President of Mandal Praja Parishad, Kodur, who was interested in purchasing the building where the school is at present located, brought pressure on the petitioner to sell the said building in her favour. Since the petitioner did not agree for the same, the 4th respondent bore grudge and at her instance the respondents 2 and 3 did not take any further steps to shift the school to the new building. The petitioner also states that the District Collector, Kadapa, having personally inspected the premises and having noted the fact that alternative building is ready for occupation, by proceeding dated 03-05-2004, directed the respondents 1 to 3 to take necessary action for vacating the building belonging to the petitioner and shift the school to the alternative building. However, the respondents failed to take any action and therefore this writ petition was filed on 31-05-2004 alleging that even after 25 days the respondents 1 to 3 failed to implement the directions of the District Collector dated 03-05-2004. It was also pleaded that since the school will be reopened from 14-06-2004 after summer vacation for the academic year 2004-05 unless immediate steps are taken for shifting the school to the newly constructed building, the petitioner stands to suffer irreparable loss and it is also not in the interest of the students of the school, since the building may collapse at any time, particularly during the monsoon. Hence this writ petition seeking a declaration that the alleged inaction on the part of the respondents 1 to 3 is arbitrary and illegal.

On behalf of the respondents, the second respondent filed a counter affidavit denying the allegations made by the petitioner and stating that on the

representation of the petitioner the Mandal Engineering Officer has inspected the school building on 06-10-2002 and submitted a report stating that the school building is not in a dilapidated condition but it is in a good condition. It is also stated that the plea that the respondent authorities constructed a school building in Sy.No.712 is incorrect and the said building has never been handed over to the Mandal Parishad, Kodur. In pursuance of the directions of the District Collector, Kadapa, to identify the number of children who stay near the present school so that depending on the strength one or two rooms can be constructed in the vacant site available opposite the present main school owned by the Grampanchayat, Kodur, the President of the Mandal Parishad, Kodur, instructed the second respondent to obtain the information with regard to road facility, approval of Gram panchayat, strength particulars in the school and number of rooms sanctioned. It is also stated that the Mandal Revenue Officer, Kodur, vide his letter dated 28-06-2004 informed that the new primary school building which has been constructed in Sy.No.712 has no approach road. That apart, the Secretary, Grampanchayat, Kodur, stated that the newly constructed Mandal Parishad Elementary School building was not approved by the Grampanchayat. It is true that the Grampanchayat, Kodur, passed a resolution dated 29-06-2004 duly accepting to allot vacant site for construction of one room basing on the strength particulars submitted by the Mandal Educational Officer, Kodur, vide proceedings dated 14-06-2004, however, with regard to the number of rooms and the grant particulars, no reply has been received from the Deputy Executive Engineer, Panchayat Raj, Kodur. In the circumstances, a detailed report has been submitted to the District Collector, Kadapa, requesting to issue further necessary instructions by proceedings dated 18-06-2004. It is also stated that during the 19th round Janma Bhoomi Programme, the Nodal Officer for Railway Kodur Mandal, after inspection of the newly constructed school building submitted a report dated 10-07-2003 to the District Collector, Kadapa, stating that there is no compound wall and that the school in the present condition is not habitable as the newly constructed rooms are insufficient.

In the circumstances, the general body of the Grampanchayat by resolution No.184 dated 05-07-2004 has resolved to submit proposals to the District Educational Officer, Kadapa, to take necessary steps for providing all the

facilities as there is no approach road to the newly constructed building and the same has not been handed over to the Mandal Parishad and to provide one room in the vacant place opposite the existing school building to facilitate the children residing near the present school building as directed by the District Collector. Thus, it is pleaded that the action for shifting the school is in process and school will be shifted after providing the minimum amenities as directed by the District Educational Officer and the District Collector, Kadapa.

The 4th respondent also filed a separate counter affidavit on the same lines and stating that the plea that the school building is in dilapidated condition is false and invented only for the purpose of getting the school building vacated. It is also stated that the said building was in fact sold out to one Sri Narayanaiah who was Samithi President, Railway Kodur, and was also Chairman of a state level corporation. The allegation that the 4th respondent pressurized the petitioner to sell the school building to her has been specifically denied and it is stated that in fact the building was already sold out to Sri Narayanaiah long ago. The plea of the petitioner that new school building was constructed in Sy.No.712 has also been denied and it is stated that it has not been handed over to the Mandal Parishad by the Deputy Engineer, Panchayat Raj, Kodur so far. The other averments in the counter filed by the 2nd respondent with regard to the suitability of the said new building have been reiterated and it is further stated that the Mandal Parishad has no interest to continue the school at the present building permanently but they require reasonable time to vacate the premises and therefore the writ petition is misconceived and liable to be dismissed.

I have heard the learned counsel for both the parties and perused the material available on record.

As can be seen from the material on record, it is not in dispute that the Mandal Praja Parishad Elementary School at Kodur is located in a private building. Though the petitioner claims that he is the owner of the building, the 4th

respondent alleges that he has already sold it to one Narayanaiah. Be that as it may, it appears that on the basis of representations made by the petitioner stating that the building is in a dilapidated condition, the Mandal Parishad Development Officer, Kodur, inspected the said building in the year 2002 and addressed a letter dated 08-09-2002 to the Chief Executive Officer, Zilla Parishad, Kadapa, stating that the building is in bad shape and requires major repairs. It also appears that at one point of time there was a proposal to temporarily accommodate the school in the DWACRA building, which is at a distance of two furlongs from the existing building. However an alternative building was constructed in Sy.No.712 in an extent of 15 cents of land donated by a philanthropist. The grievance of the petitioner in this writ petition is that in spite of the fact that an alternative building is made ready and even the District Collector issued directions for shifting the school, the respondents 1 to 3 failed to implement the same. To substantiate his plea, the petitioner has placed before this Court a Memo dated 03-05-2004 issued by the District Collector, Kadapa, and on the basis of the same seeks a writ of Mandamus declaring the alleged inaction on the part of the respondents 1 to 3 to implement the said directions as arbitrary and illegal. However, on a perusal of the urgent note dated 03-05-2004, issued by the District Collector, Kadapa, I do not find any positive direction as such to shift the school to the new building immediately. It only appears to be certain instructions for taking necessary further action for providing an alternative accommodation for locating the school.

As a matter of fact, on a careful consideration of the material on record and the counter affidavits filed by the Mandal Parishad Development Officer, Kodur, as well as the President of the Mandal Praja Parishad, it appears that the plea of the petitioner that the building of the petitioner where the school is at present located is in a dilapidated condition itself is seriously disputed. There are different versions with regard to the condition of the said building. Whereas, the Mandal Parishad Development Officer in his letter dated 08-09-2002 said that the building in a bad shape and requires major repairs, the Mandal Engineering Officer, Mandal Parishad, Railway Kodur submitted a report on 06-10-2002 stating that it is in a good condition and the school can be continued in the said

premises which has good ventilation. It is also interesting to note that there is no complaint either from the School Education Committee or the parents of the children or the teachers about the condition of the building nor there is any material to show that they are insisting for shifting the school immediately on safety grounds. The petitioner herein is the person who claims to be the owner of the building and who wants the premises to be vacated.

It is also relevant to note that even with regard to the alternative building constructed in Sy.No.712, there is no consensus as to the suitability of the building for locating the school. In the counter affidavit filed by the second respondent it is stated that as per the letter of the Mandal Revenue Officer, Kodur, dated 20th June, 2004 there is no approach road to the school building and that the said building was not approved by the Grampanchayat. That apart, the Gram Panchayat passed resolutions dated 29-06-2004 and 5-7-2004 resolving to submit reports to the District Educational Officer for providing required amenities to the new building and to hand over the same to the Mandal Parishad and also accepting to allot vacant site opposite the existing school for construction of one room. In the counter affidavit there is also a reference to the report dated 10-07-2003 submitted by the Nodal Officer Railway Kodur, during the 19th round Janmabhool Programme wherein it was stated that there was no compound wall and no approach road to the new building and that the rooms are also insufficient. Moreover, the newly constructed building has not been handed over to the Mandal Parishad till today.

Thus apparently both the issues namely whether the building where the school is at present located is in a dilapidated condition and unsafe to continue the school and the availability and suitability of the new building for locating the school involve several disputed questions of fact, which cannot be investigated into by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. That apart, as expressed above, the urgent note dated 03-05-2004 issued by the District Collector, Kadapa, does not contain any positive directions for shifting the school which can be said to have been disobeyed or not implemented by the respondents 1 to 3. Moreover, on the basis of the material on record absolutely no case is made out to show that the petitioner acquired any legal right which can be said to have been infringed so as to maintain a writ petition under Article 226 of the Constitution of India. If the

petitioner merely seeks recovery of possession of the premises, may be the remedy is elsewhere but not by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

As a matter of fact, as explained by the respondents in their respective counter affidavits it is clear that even the respondents are intending to shift the school to some other suitable premises and the proposals are under consideration. In the circumstances, I do not see any reason to hold that there is any inaction on their part in shifting the school from the existing premises, nor can it be said that they acted in breach of any statutory provision warranting issuance of a writ of Mandamus as prayed for.

However, keeping in view the allegation as to the dilapidated condition of the building, and keeping in view the safety of the students, I deem it appropriate to direct the District Collector, Kadapa to enquire into the whole issue particularly with regard to the condition of the building where the school is at present located after a personal inspection by himself or by deputing a responsible officer and in case it is found that it is not suitable for accommodating the school, to take immediate steps to shift the same either to the new building constructed in Sy.No.712 subject to its suitability or to any other alternative building expeditiously. The inspection shall be conducted within a period of two weeks from the date of receipt of a copy of this order and after assessing the condition of the building, the District Collector, Kadapa, shall take the appropriate steps as he deems necessary so as to ensure the safety of the students of the school.

The Writ Petition is accordingly disposed of with the above directions. No costs.

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G. ROHINI, J

Dated: 31-12-2004

Note:-

1. CC by Monday.

2. Office is directed to communicate a copy

of this order to the District Collector, Kadapa.

(B/O)

LSK

To

1 The District Collector, Kadapa.

2 The District Educational Officer, Kadapa District.
3 The Mandal Parishad Development Officer, Kodur, Kadapa District.
4 The Mandal Educational Officer, Kodur, Kadapa District.
5 The President, Mandal Praja Parishad, Rly.Kodur, Kadapa District.

6 Two C.Cs. to the Government Pleader for Education,

High Court Buildings, Hyderabad. (OUT)

7 Two C.D. copies.